

DOCUMENT RESUME

03179 - [A2231362]

[Claim for Military Benefits Following Correction of Dishonorable Discharge to Honorable Discharge]. B-178320. August 9, 1977. 4 pp.

Decision re: 2d Lt. Albert C. Homcy; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: 38 U.S.C. 2501. 31 U.S.C. 71a. 34 Comp. Gen. 35. 52

Comp. Gen. 909. Homcy v. Resor, 455 F.2d 1345 (D.C. Cir.

1971). Homcy v. United States, Ct. Cl. No. 187-74 (1976).

A former United States Army lieutenant appealed a settlement which disallowed his claim for pay and allowances forfeited pursuant to a general court-martial order which also included a dishonorable discharge, even though the discharge was later corrected to an honorable discharge. Where the correction of a military record to show an honorable discharge did not otherwise affect the court-martial sentence under which the dishonorable discharge was issued, the correction created no entitlement to payment for accrued leave and pay and allowances forfeited pursuant to the court-martial order, and the statute of limitations bars payment of a claim filed more than 10 years after it accrued. The claim for mustering out pay may not be allowed since the records show that the member was paid the maximum amount of such pay. (Author/SC)

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: D-178320

DATE:

MATTER OF: Second Lieutenant Albert C. Homcy, AUS

DIGEST:

1. Where the correction of a military record to show an honorable discharge did not otherwise affect the court-martial sentence under which dishonorable discharge was issued, the correction created no entitlement to payment for accrued leave and pay and allowances forfeited pursuant to court-martial order, and the statute of limitations (31 U.S.C. 71a (1970)) bars payment of the claim filed more than 10 years after it accrued.
2. While a correction in a member's discharge to honorable entitled him to receiving out pay, a claim for such pay may not be allowed where records show that the member was paid the maximum amount of such pay.

Mr. Albert C. Homcy, a former United States Army lieutenant, appeals from an October 24, 1972 settlement by the Claims Division (formerly the Transportation and Claims Division) of this Office. The Claims Division disallowed Mr. Homcy's claim for pay and allowances forfeited pursuant to general court-martial order which also included a dishonorable discharge, notwithstanding correction of the dishonorable discharge to an honorable discharge.

The record indicates that Mr. Homcy was tried by a general court-martial on October 19, 1944. He was found guilty of misbehavior before the enemy and sentenced to be dismissed from the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for 50 years. The convening authority

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reduced the confinement to 10 years, and Mr. Honey was dishonorably discharged on December 5, 1944. On January 7, 1946 after serving 14 months' confinement, Mr. Honey was reenlisted in the Army as a private. The Army vacated the remainder of his sentence, and he received an honorable discharge from this enlistment on August 24, 1946.

After several unsuccessful attempts at having his dishonorable discharge overturned by the Board for Correction of Military Records, Mr. Honey sought a declaratory judgment in the Federal District Court for the District of Columbia that the court-martial lacked jurisdiction and that, as a result, his military records should be corrected to show an honorable discharge in 1944.

The district court granted Mr. Honey's cross motion for summary judgment on the ground that the court-martial was subject to improper command influence, and held that Mr. Honey was entitled to have his record corrected to show that his discharge from the United States Army on December 5, 1944, was honorable. The Court of Appeals for the District of Columbia Circuit affirmed. Honey v. Resor, 455 F. 2d 1345 (D.C. Cir. 1971). As a result the Board for Correction of Military Records corrected Mr. Honey's records to the extent of showing that Mr. Honey was honorably discharged on December 5, 1944.

Mr. Honey then submitted a claim to this Office for the backpay and allowances forfeited pursuant to the court-martial order. Our Claims Division denied the claim on October 24, 1972, on the ground that there was no authority for payment, as Mr. Honey had received all he had requested from the district court. He had not sought a reversal of the court-martial conviction, and the district court order merely directed removal of the dishonorable discharge. Mr. Honey attempted to reopen the district court case to obtain a judgment for backpay. The district court denied his motion on October 12, 1973.

In the United States Court of Claims, Mr. Honey brought an action claiming backpay, allowances and other benefits since 1944. He entered a motion for summary judgment contending that despite any delay in bringing

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the action, he was entitled to monetary relief. The court denied the motion on June 16, 1976, and held that Mr. Honey's claim was barred by the statute of limitations, 28 U.S.C. 2501 (1970), applicable to actions brought in that court. Honey v. United States, Ct. Cl. No. 187-74, June 16, 1976.

Mr. Honey's claim consists of forfeited pay and allowances which he says he did not receive for the period of July 1944 through the date of his discharge, December 5, 1944; payment for approximately 60 days of leave he indicates he had accrued at the date of his discharge; and \$300 mustering out pay.

As the Claims Division advised him previously, and as the Court of Claims also recognized, the correction of his discharge to honorable, pursuant to the district court decision, did not entitle him to any payment for the pay and allowances forfeited pursuant to the court-martial sentence since that part of the sentence was left unaffected. Therefore, the pay and allowances for the period of July 1944 through December 5, 1944, and the accrued leave payment, which is also a compensation for active service, remain forfeited. See 34 Comp. Gen. 95 (1954) and 52 Comp. Gen. 909 (1973). In addition, since Mr. Honey's entitlement to those amounts was unaffected by the subsequent correction of his discharge, his claim for those amounts is subject to the time limitation of 31 U.S.C. 71a (1970), which barred from consideration claims received in the General Accounting Office more than 10 years from the date they first accrued. Mr. Honey's claim for forfeited pay and allowances and accrued leave was first received in this Office on September 19, 1972, more than 25 years after accrual. Therefore, consideration by this Office of his claim for those amounts is barred by law as they were similarly barred from consideration by the Court of Claims.

Our Claims Division, on May 17, 1977, authorized payment to Mr. Honey of an additional \$100 in mustering out pay. Since the claim for mustering out pay became due as a result of the change in the claimant's discharge, that payment was not barred by 31 U.S.C. 71a. However, that is

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the only payment which became due as a result of the change in Mr. Honey's discharge.

In view of the above, the action of our Claims Division disallowing the remainder of Mr. Honey's claim is sustained.

R.F. FELLER

Deputy | Comptroller General  
of the United States